In the Supreme Court of the United States.

EX PARTE THE NATIONAL ENAMELING AND STAMPING COMPANY AND THE LALANCE & GROSJEAN MANUFACTURING COMPANY.

The above named petitioners, National Enameling and Stamping Company and the Lalance & Grosjean Manufacturing Company, upon the petition hereto annexed and the exhibits made a part thereof, now move the Honorable, the Justices of the Supreme Court of the United States for a rule on the Judges of the United States Circuit Court of Appeals for the Second Circuit, to show cause at the earliest practicable day that can be designated under the practice of this Court, why a writ of mandamus should not be issued, commanding them to reinstate and take jurisdiction of the cross-appeal of said petitioners, dated August 8, 1905, from the decree entered on the 8th day of July, 1905, in the suit in equity in the Circuit Court of the United States for the Southern District of New York, in which said petitioners are complainants, and the New England Enameling Company is defendant, and commanding said Judges thereafter to make such disposition of said cross-appeal as ought to have been made had the same not been dismissed by them "for the want of jurisdiction," and why the petitioners should not have such other and further relief in the premises as may be proper.

Dated New York, N. Y., January 5th, 1906.

ARTHUR V. BRIESEN,
LOUIS MARSHALL,
WALTER D. EDMONDS,
Of Counsel for Petitioners.

4 TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The joint petition of The National Enameling and Stamping Company and the Lalance & Grosjean Manufacturing Company, respectfully shows:

1. Your petitioner, The National Enameling and Stamping Company is a corporation duly incorporated and doing business under and pursuant to the laws of the State of New Jersey, and your petitioner, Lalance & Grosjean Manufacturing Company, is a corporation duly organized and
5 doing business under and pursuant to the laws of the State of New York.

2. On or about the 18th day of March, 1903, a suit in equity was duly commenced by your petitioners, as complainants, in the Circuit Court of the United States for the Southern District of New York, against the New England Enameling Company, a corporation duly organized and doing business under and pursuant to the laws of the State of Connecticut, and having a regular and established place of business within said Southern District of New York, to restrain the infringement by that Company of Letters Patent of the United States, No. 527,361, granted to Hubert Claus, October 9,
6 1894, for improvements in enameling metal ware, and to recover damages and profits for such infringement, and for the other relief usual in such cases. A copy of the specification of said Letters Patent is hereto annexed and marked Exhibit "A."

3. Thereafter issue was duly joined in said cause and exceptionally voluminous proofs taken therein at great expense on behalf of both parties, the printed record on said appeal comprising 3,093 pages. The said cause, upon said pleadings and proofs, came on for final hearing by said Court, which, on

the 8th day of July, 1905, entered its decree therein, 7
in and by which said decree, the 4th, 5th, 6th, 7th and 8th claims of said patent were adjudged to be valid and infringed by said defendants, the 9th, 10th, 11th and 12th claims valid but not infringed, and the 1st, 2d and 3d claims invalid, and the bill dismissed as to said claims 1, 2, 3, 9, 10, 11 and 12.

4. On or about the first day of August, 1905, the said defendant appealed from said decree to the said Circuit Court of Appeals. True copies of the said appeal, assignment of errors thereon, and citation are hereto annexed and marked respectively Exhibits B, C and D; said appeal has not yet been heard, but has been set for argument at the Febru- 8
ary, 1906, session.

5. On the 8th day of August, 1905, your petitioners, on their part, appealed from the decree dismissing the bill. True copies of their said cross appeal (E), assignment of errors (F), and citation (G), are likewise hereto attached and marked respectively Exhibits E, F and G.

6. The said New England Enameling Company moved the said Circuit Court of Appeals to dismiss your petitioners' said cross appeal, because of its alleged want of jurisdiction thereover. True copies of the notice of said motion (H), and of the motion 9
(I), are hereto annexed and marked Exhibits H and I; also true copies of all the other papers on which said motion was based, being as follows, viz.: the affidavit of John O. Gempler (J), verified October 9, 1905, the citation on your petitioners' said cross appeal (G), your petitioners' said cross appeal (E), your petitioners' assignments of errors (F), and the said decree (K), which said papers so annexed are respectively marked Exhibits J, G, E, F and K; also of the Clerks' certificates filed on behalf of your petitioners, copies of which are annexed and marked Exhibit L (pp. 27 and 28 hereof).

7. Thereafter the said motion came on to be heard
10 by said Circuit Court of Appeals, and was duly argued by both parties on the 16th day of October, 1905, and the said Court thereafter granted the said motion, and refused to entertain, and dismissed your petitioners' said cross-appeal on the ground that said Court had no jurisdiction thereover, as is shown by the order entered in said cause on the 3d day of January, 1906, a true copy of which is hereto annexed and marked Exhibit M. With the knowledge and consent of the said New England Enameling Company, your petitioners have paid one-half of the Clerk's fees for certifying, preparing and printing the record on said appeals, amounting in the aggre-
11 gate to the sum of $1,819.20.

8. Your petitioners are advised and believe that said order of January 3, 1906, dismissing your petitioners' said cross-appeal, on the ground that the Court did not have jurisdiction to entertain said appeal, was improperly made; but that on the contrary the said Circuit Court of Appeals had, and has jurisdiction and power to entertain and dispose not only of said New England Enameling Company's appeal, but also simultaneously of your petitioners' said cross-appeal, and of the entire cause upon the merits, and that your petitioners have no other relief in the premises except by mandamus from this Honorable
12 Court.

9. Your petitioners are now advised and believe that said decree, in so far as it dismissed your petitioners' bill of complaint, was a final decision, and adjudicated as completely and finally as could be done by the Circuit Court of the United States; that claims 1, 2 and 3 of said patent are invalid, and that claims 9, 10, 11 and 12 are not infringed by said New England Enameling Company; that by the said dismissal of their said cross-appeal your petitioners have been prevented from reversing said final decision by an appeal taken as required within the six months limited by law; that said

New England Enameling Company, by exercising 13
the option accorded them by the Act of Congress of June 6, 1900, by taking their appeal at this stage of the cause, did thereby open the entire cause and decision of the Circuit Court to review, and conferred on said Circuit Court of Appeals jurisdiction to so review on the merits, and that therefore your petitioners' said cross-appeal was properly taken and was improperly dismissed.

10. Unless the said mandamus is granted, your petitioners will either be precluded from reversing the decree of the United States Circuit Court which adjudged the 1st, 2d and 3d claims of their Letters Patent invalid, and the 9th, 10th, 11th and 12th 14
claims thereof not infringed, or the entire record of said cause will necessarily be twice separately before said Court of Appeals on two separate appeals relating to the questions of validity and infringement of said claims of said patent, and thereby the burdens of the Court and of the parties unnecessarily and improperly doubled, thus bringing the case up for review piecemeal, and possibly, in each instance, before a differently constituted Court, to the irreparable injury, jeopardy and delay of your petitioners.

11. It is of the utmost importance to all of the parties to said cause that there shall be the speediest possible adjudication by the United States Circuit 15
Court of Appeals as to the validity of all of the claims of the aforesaid Letters Patent which are the subject matter thereof, and that it is especially important to your petitioners that their rights thereunder shall be finally and authoritatively adjudicated without delay, owing to the fact that said Letters Patent will expire on the 9th day of October, 1911.

WHEREFORE, your petitioners pray that this Honorable Court will issue a writ of mandamus, commanding the Judges of the United States Circuit Court of Appeals for the Second Circuit to take jurisdiction over and to reinstate your petitioners'

16 said cross-appeal and to make such disposition thereof, simultaneously with said appeal of said New England Enameling Company, as ought to have been made had the same not been dismissed, and the said order of January 3d, 1906, entered.

And your petitioners further pray that pending this honorable Court's final determination of this, their petition, all proceedings in said cause, and on said appeal of said New England Enameling Company, may be stayed, and also that there be granted to your petitioners such other and further relief, or both, in the premises as may be just.

And your petitioners will ever pray, &c.

17

Dated this 5th day of January, 1906.

NATIONAL ENAMELING AND STAMPING CO.,
By A. M. STEINHARDT,
Treasurer.

LALANCE & GROSJEAN MFG. CO.,
By JAS. COCHRAN,
Vice-President.

UNITED STATES OF AMERICA, }
State and County of New York, } ss.:

On this 5th day of January, 1906, personally came before me Adolph M. Steinhardt, Treasurer
18 of the National Enameling and Stamping Company, one of the petitioners named in the foregoing petition, who, being by me duly sworn, deposes and says: That he is the Treasurer of the said Company; that he has read the foregoing petition subscribed with the name of said Company per himself as Treasurer; that he knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

PHILIP C. PECK,
[L. S.] Notary Public,
New York County.

UNITED STATES OF AMERICA, State and County of New York, } ss.:

On this 5th day of January, 1906, personally came before me James Cochran, Vice-President of the Lalance & Grosjean Manufacturing Company, one of the petitioners named in the foregoing petition, who, being by me duly sworn, deposes and says: That he is the Vice-President of the said company; that he has read the foregoing petition subscribed with the name of said company per himself as Vice-President; that he knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

PHILIP C. PECK,
Notary Public,
New York County.

[L. S.]

22 **Exhibit B.**

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
23 Complainants,

vs.

NEW ENGLAND ENAMELING CO.,
Defendant.

Petition for Appeal.

The New England Enameling Company, defendant in the above entitled cause, feeling itself aggrieved by the decree against it in this cause and
24 entered at a Stated Term of the United States Circuit Court, held in and for the Southern District of New York, at the Borough of Manhattan, State of New York and City of New York, on the 8th day of July, 1905, does hereby appeal from the said order to the United States Circuit Court of Appeals for the Second Circuit, for reasons specified in the assignment of errors, which is filed herewith, and prays that its appeal may be allowed, and a citation directed to the above named complainants, National

Enameling and Stamping Company and Lalance & Grosjean Manufacturing Company, commanding them to appear before the United States Circuit Court of Appeals for the Second Judicial Circuit, to do and to receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and papers in said cause upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Judicial Circuit. 25

STEINHARDT & GOLDMAN,
Solicitors for Defendant-Appellant.

WM. HOUSTON KENYON,
ROB'T. N. KENYON,
WALTER F. ROGERS, 26
Of Counsel.

Appeal allowed this 1st day of August 1, 1905.

E. H. LACOMBE,
U. S. Circuit Judge.

27

28 **Exhibit C.**

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
29 Complainants,

vs.

NEW ENGLAND ENAMELING COMPANY,
Defendant.

And now comes the defendant-appellant in the above entitled cause, and says that in the record and proceedings therein there is manifest error in this, to wit:

30 FIRST.—That the Circuit Court of the United States for the Southern District of New York erred in finding that the defendant had infringed Claims 4, 5, 6, 7 and 8 of Letters Patent No. 527,361.

SECOND.—That the Circuit Court of the United States for the Southern District of New York erred in not finding that the defendant had not infringed Claims 4, 5, 6, 7 and 8 of said Letters Patent No. 527,361.

THIRD.—That the Circuit Court of the United States for the Southern District of New York erred

in not finding that Letters Patent No. 527,361, so far 31
as Claims 4, 5, 6, 7 and 8 are concerned, are invalid and void:

(*a.*) As being anticipated by the prior art disclosed by the record;

(*b.*) as being devoid of patentable invention in view of the prior art disclosed by the record;

(*c.*) as being for a different invention from that set out in the specification;

(*d.*) as being for a different invention from that held by the Court to be the real invention disclosed 32
by said Patent No. 527,361 over the art;

(*e.*) as being for an invention insufficiently and improperly and not legally described in the said patent;

(*f.*) as being for an invention not properly or legally claimed in said claims.

FOURTH.—That the Circuit Court of the United States for the Southern District of New York erred in finding that Claims 4, 5, 6, 7 and 8, or any of them, of said Letters Patent No. 527,361 are valid.

FIFTH.—That the Circuit Court of the United 33
States for the Southern District of New York erred in interpreting Claims 4, 5, 6, 7 and 8 as product claims while distinguishing them from the art only by the process by which the product is made.

SIXTH.—That the Circuit Court of the United States for the Southern District of New York erred in sustaining the product Claims 4, 5, 6, 7 and 8 as valid while distinguishing the invention from the art only by steps in the process which do not persist in the product.

34 SEVENTH.—That the Circuit Court of the United States for the Southern District of New York erred in holding Claims 4, 5, 6, 7 and 8 valid by construing the distinguishing characteristics recited in said claims as applying to a certain early step or condition in the process of manufacture, to wit, the so-called "mix," whereas those distinguishing characteristics are clearly and unequivocally recited in the claims as applying to the coating or enamel upon the finished article, to wit, the so-called "frit" or "dip" actually applied to the article and with which alone the "metallic oxides" are combined.

EIGHTH.—That the Circuit Court of the United
35 States for the Southern District of New York erred in not holding that Claims 4, 5, 6, 7 and 8 are invalid and void, because the characteristics of the coating or enamel upon the finished article recited in said claims were not novel with Claus nor the combination of such coating or enamel with metallic oxides as recited in said claims.

NINTH.—That the Circuit Court of the United States for the Southern District of New York erred in interpreting Claims 4, 5, 6, 7 and 8 of the Letters Patent No. 527,361 in terms not found in the patent.

36 TENTH.—That the Circuit Court of the United States for the Southern District of New York erred in ordering an injunction and accounting upon Claims 4, 5, 6, 7 and 8 of Letters Patent No. 527,361.

ELEVENTH.—That the Circuit Court of the United States for the Southern District of New York erred in not dismissing the bill of complaint, with costs to the defendant.

Wherefore, the said New England Enameling Company prays that the decree of the Circuit Court of the United States for the Southern District of

New York be reversed, and that the Circuit Court 37
of the United States for the Southern District of New York be directed to enter a decree dismissing the bill of complaint, with costs to the defendant.

STEINHARDT & GOLDMAN,
Solicitors for Defendant-Appellant.

WM. HOUSTON KENYON,
ROBT. N. KENYON,
WALTER F. ROGERS,
Of Counsel.

(Endorsed)—U. S. Circuit Court, Southern Dist. of New York.—National Enameling & Stamping Co. *et al. vs.* New England Enameling Co., Deft.—Assignment of Errors. 38

Exhibit D.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

PRESIDENT OF THE UNITED STATES TO NATIONAL ENAMELING AND STAMPING CO. AND LALANCE & GROSJEAN MANUFACTURING COMPANY, GREETING:

39

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Second Circuit, to be held at the City of New York, in the State of New York, in said circuit, on the 29th day of August, 1905, pursuant to an appeal duly obtained from a decree of the United States Circuit Court for the Second District of New York, entered in the office of the Clerk of said Court, on the 8th day of July, 1905, wherein the New England Enameling Company is the appellants, and you are the appellees, to show cause, if any there be, why said decree entered against the

said appelllant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 1st day of August, in the year of our Lord one thousand nine hundred and five.

E. H. LACOMBE,
United States Circuit Judge.

Exhibit E.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants,

vs.

NEW ENGLAND ENAMELING COMPANY,
Defendant.

Appeal.

The above named complainants, considering themselves aggrieved by the decree of this Court, filed and entered herein on the 8th day of July, 1905, dismissing the Bill of Complaint herein as to claims 1, 2, 3, 9, 10, 11, 12 of Letters Patent No. 527,361, of October 9th, 1894, for enameling metal ware, here in

suit, do hereby appeal to the United States Circuit 43
Court of Appeals for the Second Circuit, and pray that their appeal may be allowed and citation granted, directed to the above named defendant, commanding it to appear before said United States Circuit Court of Appeals to do and receive what may appertain to justice to be done in the premises, and that a transcript of the pleadings and proofs, exhibits, evidence, records and proceedings in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, August 8th, 1905.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainant, National Enameling 44
and Stamping Co.,
30 Broad Street,
New York, N. Y.

WALTER D. EDMONDS,
Solicitor for Complainant, Lalance & Grosjean
Manufacturing Co.,
31 Nassau Street,
New York, N. Y.

The foregoing appeal allowed.
E. H. LACOMBE,
U. S. Circuit Judge.

45

46 **Exhibit F.**

UNITED STATES CIRCUIT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY, Complainants, vs. NEW ENGLAND ENAMELING COMPANY, 47 Defendant.	In Equity.

Assignment of Errors.

In pursuance of and obedient to Rule Eleven, formulated and adopted in the United States Circuit Court of Appeals for the Second Circut, the above named complainants respectfully make the following assignment of errors in the above entitled case, to wit:

I.—That the Court erred in holding claim 1 of U. S. Letters Patent No. 527,361 in suit invalid.

48 II.—That the Court erred in holding claim 2 of said Letters Patent invalid.

III.—That the Court erred in holding claim 3 of said Letters Patent invalid.

IV.—That the Court erred in failing to hold claim 1 of said Letters Patent infringed.

V.—That the Court erred in failing to hold claim 2 of said Letters Patent infringed.

VI.—That the Court erred in failing to hold claim 3 of said Letters Patent infringed.

VII.—That the Court erred in holding claim 9 of said Letters Patent not to be infringed. 49

VIII.—That the Court erred in holding claim 10 of said Letters Patent not to be infringed.

IX.—That the Court erred in holding claim 11 of said Letters Patent not to be infringed.

X.—That the Court erred in holding claim 12 of said Letters Patent not to be infringed.

XI.—That the Court erred in failing to award complainants their taxable charges, costs and disbursements of this suit. 50

Wherefore, and for divers other errors in the record of this cause appearing, complainants-appellants pray that the decree entered herein on the 8th day of July, 1905, be reversed as to the above stated claims numbered 1, 2, 3, and as to non-infringement of said claims 9, 10, 11, 12, and that a decree be directed to be entered sustaining the validity of all of said claims and finding infringement of all of said claims by the above named defendant, and awarding an injunction as to all of said claims, and the other relief prayed for in the bill, together with all of the costs and disbursements in the United States Circuit Court and in the United States Circuit Court of Appeals to these 51 complainants-appellants, and for such other and further relief as to the Court may seem meet.

Dated New York, August 8, 1905.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Solicitors for Complainants-Appellants,
National Enameling and Stamping Company.

WALTER D. EDMONDS,
Solicitor for Complainant-Appellant,
Lalance & Grosjean Manufacturing Co.

52 **Exhibit G.**

By the Honorable E. HENRY LACOMBE, Circuit Judge in and for the Southern District of New York, within the Second Circuit, to NEW ENGLAND ENAMELING COMPANY, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the district and Circuit above named, on the 8th day of September, 1905, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United
53 States for the Southern District of New York, wherein the National Enameling and Stamping Company and Lalance & Grosjean Manufacturing Company are appellants, and you, the said New England Enameling Company are appellee, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected, and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 8th day of August, in the year of our Lord, one thousand nine hundred and five, and of the Independence of the United States the one hundred and thirtieth.

54 E. H. LACOMBE,
Judge of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

(Filed August 10, 1905.)

Exhibit H.

55

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants-Cross-Appellants,

vs

NEW ENGLAND ENAMELING COMPANY,
Defendant-Cross-Appellee.

56

Please take notice that on the call of the motion calendar of the United States Circuit Court of Appeals for the Second Circuit on Monday, October 16, 1905, or as soon thereafter as counsel can be heard, we will make a motion to dismiss the cross-appeal taken by the complainants-cross appellants a copy of the motion being annexed hereto. That at the hearing of said motion we will refer to the affidavit of John O. Gempler hereto attached and to the exhibits produced in said affidavit and also attached hereto.

Dated New York, October 9, 1905.

57

Respectfully,

STEINHARDT & GOLDMAN,
Solrs. for Defendant-Cross-Appellee.
ROBERT N. KENYON,
Of Counsel for Defendant-Cross-Appellee.

To GUGGENHEIMER, UNTERMEYER & MARSHALL,
Solrs. for Complt.-Cross-Appellant,
30 Broad Street,
New York; and
WALTER D. EDMONDS, Esq.,
Solr. for Complt.-Cross-Appellant,
31 Nassau Street,
New York.

58

Exhibit I.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants-Cross-Appellants,

59 vs.

NEW ENGLAND ENAMELING COMPANY,
Defendant-Cross-Appellee.

And now comes the above named defendant-cross-appellee and shows that on or about July 8, 1905, an interlocutory decree, a true copy of which is hereto attached, was entered herein by the United States Circuit Court for the Southern District of New York, dismissing the bill of complaint as to the first, second, third, ninth, tenth, eleventh and twelfth claims of the patent here in suit, but sus-
60 taining the fourth, fifth, sixth, seventh and eigth claims of said patent, and directing that a permanent injunction be issued restraining the defendant from further infringement of said fourth, fifth, sixth, seventh and eighth claims, and directing that the defendant account for damages and profits for its infringement of said fourth, fifth, sixth, seventh and eighth claims, and referring the cause to a master to ascertain and assess the said profits and damages and to report thereon to the Court; and that thereafter, to wit, on

or about August 1, 1905, the above named defendant took an appeal, which was allowed on the same day, from so much of said decree as granted an injunction under said claims fourth, fifth, sixth, seventh or eighth; and that thereafter, to wit, on or about August 8, 1905, the above named complainants-cross-appellants took an appeal, which was allowed on the same day, from such portions of said decree as dismissed the bill so far as it related to the first, second, third, ninth, tenth, eleventh and twelfth claims of said patent; true copies of the appeal papers of the said complainants-cross-appellants, including the assignment of errors accompanying same, being attached hereto. 61

Wherefore, this defendant-cross-appellee now moves that this Honorable Court dismiss the said appeal of the complainants-cross appellants for want of jurisdiction thereover. 62

Dated New York, October 9, 1905.

STEINHARDT & GOLDMAN,
Solicitors for Defendant Cross-Appellee.

ROBERT N. KENYON,
Of Counsel

63

64

Exhibit J.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants-Cross-Appellants,

vs.

65 NEW ENGLAND ENAMELING COMPANY,
Defendant-Cross-Appellee.

STATE OF NEW YORK, }
City and County of New York, } ss.:

JOHN O. GEMPLER, being duly sworn, deposes and says: I am docket clerk for Kenyon & Kenyon, of counsel for defendant cross-appellee in the above named case, and my duties familiarize me with the proceedings taken in suits in which Kenyon & Kenyon are of counsel. I am familiar with the proceedings that have been had in the above named case. On July 8th, 1905, a decree was signed by his
66 Honor Judge Lacombe, a true copy of this decree I produce herewith and attach to this affidavit. Thereafter on the 8th day of August, 1905, an appeal was taken by the complainant. True copies of the appeal, assignment of errors and the citation are hereto attached.

JOHN O. GEMPLER.

Sworn to and subscribed before me this 9th day of October, 1905.

[SEAL.] EDWIN SEGER,
Notary Public for Kings County,
Certificate in New York County.

Exhibit K.

67

At a Stated Term of the Circuit Court of the United States, in and for the Southern District of New York, in the Second Judicial Circuit, held in the Court Rooms of the said Court, in the City of New York, within said District, on the 8th day of July, 1905.

Present—Hon. E. HENRY LACOMBE, *Circuit Judge.*

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants,

AGAINST

NEW ENGLAND ENAMELING COMPANY,
Defendant.

68

In Equity.

This cause having come on for final hearing upon the amended bill of complaint, the answer thereto 69
of the defendant, the replication of the complainants to such answer, and the proofs taken and other proceedings had both on the part of the complainants and on the part of the defendant, and Mr. Arthur v. Briesen and Mr. Louis Marshall having been heard on behalf of the complainant National Enameling and Stamping Company, and Mr. Walter D. Edmonds, on behalf of the complainant Lalance & Grosjean Manufacturing Company, and Messrs. Wm. Houston Kenyon, Robert N. Kenyon, Jacob Steinhardt and Walter F. Rogers, having been heard on behalf of the defendant,

70 Now, therefore, upon due consideration thereof and on motion of Messrs. Guggenheimer, Untermyer & Marshall, solicitors for National Enameling and Stamping Company, and of Mr. Walter D. Edmonds, solicitor for Lalance & Grosjean Manufacturing Company, the complainants herein, and after due deliberation had, it is hereby

Ordered, adjudged and decreed that Letters Patent of the United States issued to Hubert Claus on the 9th day of October, 1894, numbered 527,361 for improvement in enameling metal-ware are, as to claims 4, 5, 6, 7, 8, 9, 10, 11 and 12, good and valid in law, and that the above named complainants herein are entitled to the exclusive right in, to and
71 under said Letters Patent, and in and to the inventions and improvements described in said claims of said Letters Patent and secured thereby, and that the title to the said Letters Patent is duly vested in the said complainants, National Enameling and Stamping Company and Lalance & Grosjean Manufacturing Company as co-owners thereof; and that the defendant New England Enameling Company has infringed upon the fourth, fifth, sixth, seventh and eighth claims of said Letters Patent and upon the complainants' exclusive rights thereunder, by making, using and vending to others to be used articles of enameled metal-ware made according to and embodying and containing the inventions and
72 improvements described in said Letters Patent and claimed in the fourth, fifth, sixth, seventh and eighth claims thereof; and it is further

Ordered, adjudged and decreed that the said Letters Patent No. 527,361, are, as to the first, second and third claims thereof, invalid and void because claiming that of which the said Hubert Claus was not the original or first inventor or discoverer; and that the defendant has not infringed upon the ninth, tenth, eleventh and twelfth claims of said Letters Patent; and that as to the said first, second, third, ninth, tenth, eleventh and twelfth claims of said

Letters Patent No. 527,361, the bill of complaint is 73
dismissed.

It is therefore ordered, adjudged and decreed that the complainants, National Enameling and Stamping Company and Lalance & Grosjean Manufacturing Company do each respectively and in proportion to their respective interests in said Letters Patent, recover from the said defendant, New England Enameling Company, the gains, profits, savings and advantages, which the said defendant has derived, received or made by reason of any infringement by it of complainants' said exclusive rights secured to them by the aforesaid claims or any of them, being said claims numbered fourth, fifth, sixth, seventh and eighth of said Let- 74
ters Patent during the six years before the filing of the bill of complaint herein, or since the 18th day of March, 1897, that is to say, by any manufacture, use or sale of articles of enameled metal-ware containing the inventions and improvements, or any of them, described in said Letters Patent and claimed in the fourth, fifth, sixth, seventh and eighth claims thereof, and in addition to said profits, the damages which they, the said complainants have each of them respectively sustained by reason of said infringements by the said defendant of their exclusive rights since said 18th day of March, 1897.

And it is hereby referred, because of his familiarity with the subject and convenient 75
access to exhibits and files, to John A. Shields, Esq., as a Master of this Court, to ascertain, take and state the number of said articles of enameled metal-ware made, and the number sold and the number used by the said defendant in infringement of the said fourth, fifth, sixth, seventh and eighth claims of said Letters Patent or any of them, and also the gains, profits, savings and advantages made and derived by the said defendant from and through such infringement, and also to ascertain and assess the respective damages

76 sustained by each of the said complainants respectively by reason of such infringement since said 18th day of March, 1897, and to report thereon to this Court with all convenient speed.

And the said defendant New England Enameling Company, its officers, directors, clerks, agents, servants, salesmen and employees, and each and all of them, are hereby directed and required to attend before the said Master from time to time as by him required, and to produce before him, all such books, papers, exhibits, accounts, orders, statements, vouchers or other writings or documents as they may be directed by the said Master so to produce, and to submit to such oral examination as the said
77 Master may direct; and it is further

Ordered, adjudged and decreed that a permanent injunction be issued out of and under the seal of this Court enjoining and restraining the defendant New England Enameling Company, its officers, directors, clerks, agents, servants, salesmen and employees and each of them, and all claiming or holding under them or either of them, from in any form or manner whatsoever, directly or indirectly, making, using or vending to others to be used, articles of enameled metal-ware embodying and containing the inventions and improvements, or any of them, described in said Letters Patent of the United States to Hubert Claus, dated October 9, 1894, numbered
78 527,361, for improvement in enameling metal-ware, and claimed in the fourth, fifth, sixth, seventh and eighth claims thereof, or any of them; and it is further

Ordered, adjudged and decreed that neither party in this cause recover as against the other any costs, charges and disbursements heretofore incurred herein.

E. Henry Lacombe,
U. S. Circuit Judge.

Exhibit L.

79

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants-Appellants,

AGAINST

80

NEW ENGLAND ENAMELING COMPANY,
Defendant-Appellant.

I, WILLIAM PARKIN, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that on the 5th day of September, 1905 the transcript of record in cross-appeals in the above cause was received from the Clerk of the Circuit Court of the United States for the Southern District of New York and filed in my office; that on the same day I notified each of the respective parties that the estimate of one-half of the cost 81
of printing the record was $450.; that on the 14th day of September 1905 I received from the above named complainants-appellants $450. and on the 16th day of September 1905 from the defendant-appellant the further sum of $450., in all $900. which latter sum was the estimated cost of printing the said transcript of record.

Dated, New York, October 12th 1905.

WM. PARKIN,
Clerk of United States Circuit
Court of Appeals—Second Circuit.

[SEAL.]

Exhibit L.

82

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY, Complainants,	In Equity.
AGAINST	
83 NEW ENGLAND ENAMELING COMPANY, Defendant.	

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States for the Southern District of New York, do hereby certify that upon the filing in my office of the respective assignments of errors, citation and petition and allowance of appeal of each of the respective parties upon cross appeals in the above entitled cause, and pursuant to the joint request of the respective parties, I prepared the tran-
84 script of record in the above cause to be filed with the Clerk of the United States Circuit Court of Appeals for the Second Circuit and that my fees for such transcript of record were $919.20; that I notified the respective parties of their one-half shares of such fees and that I have received from the complainants $459.60 and from the defendant $459.60 in full payment of my fees.

Dated New York, October 12, 1905.

JOHN A. SHIELDS,
[SEAL.] Clerk of the U. S. Circuit Court,
Southern District of New York.

Exhibit M.

85

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

NATIONAL ENAMELING AND STAMPING COMPANY and LALANCE & GROSJEAN MANUFACTURING COMPANY,
Complainants-Cross-Appellants,

AGAINST

NEW ENGLAND ENAMELING COMPANY,
Defendant-Cross-Appellee.

Present—Judges WALLACE AND COXE. 86

Upon reading and filing the motion of the New England Enameling Company, defendant-cross-appellee, to dismiss the cross appeal of the National Enameling and Stamping Company and the Lalance & Grosjean Manufacturing Company, on the ground that this Court has no jurisdiction to entertain said appeal, and the affidavit of John O. Gempler in support thereof, and the exhibits annexed thereto, to wit, the cross-appeal of the National Enameling and Stamping Company and the Lalance & Grosjean Manufacturing Company, complainants, the citation issued in connection therewith to the New England Enameling Company, and the assignment of errors filed in connection with said appeal, and the decree of the United States Circuit Court for the Southern District of New York, from which said appeal was taken, and the certificates of the Clerk of the United States Circuit 87

88 Court of Appeals for the Second Circuit and the Clerk of the Circuit Court of the United States for the Southern District of New York, in opposition thereto, and after hearing Robert N. Kenyon, Esq., in support of said motion, and Walter D. Edmonds, Esq., and Louis Marshall, Esq., in opposition thereto; now, upon motion of Messrs. Steinhardt & Goldman, solicitors for defendant-cross-appellee, and after due consideration had, it is

Ordered, that said motion be granted and that the cross-appeal of the complainants National Enameling and Stamping Company and the Lalance & Grosjean Manufacturing Company in the above entitled cause be, and the same hereby is, dismissed
89 on the ground that this Court has no jurisdiction to entertain said appeal.

Dated New York, January 3, 1906.

(Endorsed)—Filed January 3, 1906.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

[redacted]

Supreme Court of the United States.

OCTOBER TERM 1905.

No. 17 ORIGINAL.

Ex Parte:

IN THE MATTER

OF

THE NATIONAL ENAMELING & STAMPING CO. and THE LALANCE AND GROSJEAN MANUFACTURING CO., Petitioners.

The Answer of the Judges of the United States Circuit Court of Appeals of the Second Circuit, to the Rule to show cause why a writ of mandamus should not be granted as prayed in the petition of the National Enameling and Stamping Co. and the Lalance and Grosjean Manufacturing Co., heretofore filed in the above entitled cause.

The Respondents respectfully answer and certify to the Honorable, the Supreme Court of the United States:

1. In answer to the allegations of the petitioners above named, the Respondents respectfully refer to the papers on the cross-appeal, the motion to dismiss said cross-appeal and the papers annexed thereto, and the order of the United States Circuit Court of Ap-

peals for the Second Circuit, dismissing said cross-appeal, all of which are annexed to said petition.

2. Respondents are advised that it is not necessary that they should make any other answer to the rule aforesaid than this herein contained, nor more specifically to any of the allegations set forth in the Petition for mandamus aforesaid; and having finally answered said rule, they pray to be hence dismissed with all proper costs; respectfully submitting to the judgment of this Honorable Court, they will enforce by order, any direction given by the court in the premises.

3. Respondents respectfully refer to brief of counsel for the New England Enameling Co. filed in this Honorable Court and the authorities referred to therein, in support of the dismissal of the cross-appeal.

WILLIAM J. WALLACE.
ALFRED C. COXE.

(SEAL).
WM. PARKIN,
Clerk.